



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 29, 2005

Hon. Otto J. Higbee
Mayor, City of Mackay
203 S. Main
PO Box 509
Mackay, ID 83251

Re: Your Letter of February 18, 2005 to Gary Spackman

Dear Mayor Higbee,

I was assigned to review the above referenced letter proposing mitigation credit for surface water overflowing from the City of Mackay's spring source to the Big Lost River. As we discussed in a telephone conversation March 11, 2005, surface water overflowing from the city's spring diversion is not an acceptable mitigation source. If the city is not beneficially using water from the spring, it does not have a right to divert the water. The excess spring flows are waters of the State of Idaho. Furthermore, the spring overflows during the non-irrigation season when groundwater depletions are not affecting river flow. As a result, spring water flowing to the Big Lost River during the winter will not mitigate for depletions to the flows of the Big Lost River caused by pumping ground water.

However, the return flow from the city's sewage lagoons may be recognized as mitigation water. Because a municipality delivers water for a variety of purposes, a municipality is granted greater latitude in the use of its water. Wastewater system outflows are controlled by the municipality, and can be beneficially used at the municipality's discretion. According to the data submitted in your letter of February 18, the constant outflow from the lagoon is about 15% of the combined pumping from the two wells during the approximately 90 day period from mid-June to mid-September.

According to the requirements of mitigation for depletion to the Big Lost River contained in IDAPA 37.03.12.050, a ground water user must augment the Big Lost River with 13% of his average annual pumping volume. Because the outflow from the lagoon represents about 15% of the pumping volume, the outflow should fully mitigate for the city's groundwater pumping.

A formal submittal of the City of Mackay proposed mitigation plan should be in accordance with IDAPA 37.03.11.043, which follows:

043. MITIGATION PLANS (RULE 43).

01. Submission Of Mitigation Plans. A proposed mitigation plan shall be submitted to the Director in writing and shall contain the following information:

- a. The name and mailing address of the person or persons submitting the plan.
- b. Identification of the water rights for which benefit the mitigation plan is proposed.

- c. A description of the plan setting forth the water supplies proposed to be used for mitigation and any circumstances or limitations on the availability of such supplies.
- d. Such information as shall allow the Director to evaluate the factors set forth in Rule Subsection 043.03

A letter and the required information will satisfy these submittal requirements. The city must discharge the lagoon's return flow into the Big Lost River during the time period mitigation is required. This mitigation period is expected to start at the beginning of the irrigation season when 1905 and earlier surface water rights are undeliverable and last through the end of the irrigation season on October 1. The rate of river augmentation should correspond to approximately 13% of the combined pumping rate from the city's two supplemental wells during the mitigation period. At a minimum, the city should weekly measure and record the diversion of water from the wells and also measure and report the lagoon return flow to document the mitigation operation is providing the required 13% replacement water volume. The city should submit measurement data to the Watermaster of Water District 34 in Mackay, who can then forward it to the Idaho Department of Water Resources (IDWR). The data should be submitted at a frequency and in a format specified by the Watermaster of Water District 34 and IDWR.

Other pertinent information that may be useful to the city is listed in IDAPA 37.03.11.043 03, and can be read on the Internet at:
<http://www2.state.id.us/adm/adminrules/rules/idapa37/0311.pdf>

You may send your mitigation plan to my attention at the address on the letterhead. A designee or I will review it for approval and respond by letter. Any additional conditions for implementing the plan will be included in the letter. If you have any questions, please don't hesitate to call me at 208-287-4957.

Respectfully,



Steve Burrell
Water Distribution

c: Bob Duke, Watermaster – Mackay
IDWR Eastern Region – Idaho Falls